Office-Supreme Court, U.S.
FILED
JAN 25 1964
JOHN F. DAVIS, CLERK

LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of The United States

OCTOBER TERM, 1963

NO. 681

ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS,

Appellant,

-vs-

THE STATE OF FLORIDA,

Appellee

MOTION TO DISMISS APPEAL

JAMES W. KYNES
Attorney General

REEVES BOWEN
Assistant Attorney General

Counsel for the Appellee

TABLE OF CITATIONS

Page

Baker v. Peavy-Wilson Lumber Company, 146 Fla. 27, 200 So. 528 2

Hysler v. State, 146 Fla. 593, 1 So.2d 628 2

Jones v. State, 130 Fla. 645, 178 So. 404 2

Lamb v. Harrison. 91 Fla. 927, 108 So. 671 2

Thompson v. State, 154 Fla. 769, 18 So.2d 788 2

IN THE

Supreme Court of The United States

OCTOBER TERM, 1963

NO. 681

ADOLPHUS BROOKS, alias SONNY ADOLPHUS BROOKS, alias SONNY BROOKS,

Appellant,

-vs-

THE STATE OF FLORIDA,

Appellee.

MOTION TO DISMISS APPEAL

The appellee, the State of Florida, shows unto the Court as follows:

I

The appellant's appeal (Appellant's Appendixes, pp. 20-21) is from an order of the Supreme Court of Florida (Appellant's Appendixes, p. 22) denying his application (Appellant's Appendixes, pp. 4-5) for leave to apply to the Circuit Court of Duval County for a writ of error coram nobis.

II

Said application for leave to apply for a writ of error coram nobis (Appellant's Appendixes, pp. 4-5) did not present to the Supreme Court of Florida a substantial federal question, said order of denial (Appellant's Appendixes, p. 22) did not

expressly pass upon or decide a substantial federal question, and the appellant's appeal does not present a substantial federal question.

III

Moreover, said order rests on an adequate non-federal basis because the appellant's said application for leave to apply for a writ of error coram nobis was bottomed upon newly discovered evidence (evidence discovered since the appellant's trial) and because:

(a) A writ of error coram nobis is not available on the ground of newly discovered evidence (Lamb v. Harrison, 91 Fla. 927, 108 So. 671; Jones v. State, 130 Fla. 645, 178 So. 404). This is so even though it is shown that the party applying for such a writ will be able to produce the most convincing evidence in his behalf which was not available at the time of trial (Baker v. Peavy-Wilson Lumber Company, 146 Fla. 27, 200 So. 528).

(b) Viewed most favorably to the appellant, the said newly discovered evidence *might*, if stretched beyond the breaking point, have caused a different result if it had been available at the appellant's trial; it would not have *prevented* the appellant's conviction. Therefore, a writ of error coram nobis is not available on account of such newly discovered evidence. (Hysler v. State, 146 Fla. 593, 1 So.2d 628; Thompson v. State, 154 Fla. 769, 18 So.2d 788).

Wherefore, the appellee moves the Court to dismiss the appeal in this cause.

Even if the appellant's appeal should be treated as a petition for writ of certiorari, such petition could not be granted for

the reasons shown above, that is, that no substantial federal question was raised in the Supreme Court of Florida, none was expressly passed upon by said Court, and none is presented to this Court, and the order of the Florida Court which is challenged by the appellant rests on an adequate non-federal basis.

Respectfully submitted,

JAMES W. KYNES
Attorney General

REEVES BOWEN
Assistant Attorney General

Counsel for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I furnished a copy of the foregoing Motion to Dismiss Appeal to counsel for the appellant, Mrs. Dorothea B. Montgomery, Attorney at Law, 1128 South Edgewood Avenue, Jacksonville, Florida, by mail, this the ..... day of January, 1964.

REEVES BOWEN
Assistant Attorney General

Of Counsel for Appellee